IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8519 OF 2005

Mrs.Kumudini Gajanan Vyayahare .. Petitioner.

V/s.

Shri.Narayan Saraswati Math Baramati .. Respondents.

Mr.S.M.Oak for petitioner.

Mr.S.M.Gorwadkar for respondent Nos.2,3,5,6,8 to 10.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 21st NOVEMBER, 2007.

P.C.:

1. The only ground on which the Appellate Decree of eviction is challenged by the petitioner - tenant is that the Appellate Court failed to notice decree being claimed under Section 13(1)(g) of the Bombay Rent Act, 1947. The Mandate flowing from Section 13(2) thereof has to be followed. Non-adherence to the same and without noticing the relative hardship and rendering any finding thereon, the Appellate Court could not have proceeded to decree the suit of the respondents - Trust.

2. Admittedly, the suit was filed by the Trust, which is a religious Trust. It has premises where a SAMADHI is erected. A large number of devotees are gathering on auspicious days and religious occasions. In such circumstances, their need was found to be genuine and bonafide. The petitioner was residing in one of the rooms meant for tenants. It has been found by the Appellate Court on the basis of materials produced that the Trust indeed requires the premises for its own use and occupation. It has to make some arrangement for the devotees. In such circumstances and even the hardship that would be caused to the Trust has been duly considered. It is not as if that Section 13(2) having not been referred to or the specific words therein not reproduced that the concept of greater hardship, which is to be gone into has not been taken into consideration. A reading of paragraph No.21, which Mr.Oak relies upon, makes this aspect very clear.

3. I see no reason therefore, to interfere with the findings of fact rendered by the lower Appellate Court, which are consistent with the materials produced on record. No error apparent or perversity is disclosed.

Writ petition is, therefore, dismissed.

4. At the request of the petitioner - tenant, the decree passed by the lower Appellate Court not to be executed till 30th June, 2008, provided the petitioner - tenant files an Undertaking within a period of four weeks from the date of receipt of copy of this order, stating therein :-

i) that she is in use, occupation and possession of the suit premises, and that none else is in use and occupation thereof;

ii) that she will not alienate, encumber, part with possession or create any third party rights in the suit premises;

iii) that she will continue to pay the rent till the premises are used and that she will handover vacant and peaceful possession of the suit premises immediately after the time stipulated in this order expires.

5. Needless to clarify that if the Undertaking is not filed within the period stipulated above, the respondents

would be at liberty to execute and enforce the decree in accordance with Law. Similarly, after the Undertaking is filed but the petitioner does not vacate the premises after 30th June, 2008, the respondents are at liberty to execute and enforce the decree for possession in accordance with Law and if necessary by taking such assistance from the local police station as is permissible.

6. Writ petition is disposed of the in above terms.

(S.C.Dharmadhikari, J.)